



Neutral Citation Number: [2024] EWFC 52

Case No: LU24C50001

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2024

Before:

MR JUSTICE MACDONALD

Between:

LUTON BOROUGH COUNCIL

Applicant

**-and-
R**

First Respondent

**-and-
V**

Second Respondent

**-and-
X**

(Acting through her Children’s Guardian, Khadeja Samsuddin)

Third Respondent

Ms Ann Courtney (instructed by **Luton Borough Council**) for the **Applicant**
Ms Elisabeth Wickham (instructed by **Family Law Group**) for the **First Respondent**
Mr Steven Hayden (instructed by **Duncan Lewis**) for the **Second Assessment**
Mr Oliver Powell (instructed by **Hepburn Delaney**) for the **Third Respondent**

Hearing dates: 8 March 2024

Approved Judgment

This judgment was handed down remotely at 2.00pm on 14 March 2024 by circulation to the parties or their representatives by e-mail.

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. I am concerned with the welfare of X, born on 12 May 2020 and now aged nearly 14 years old. She is represented at this hearing through her Children’s Guardian by Mr Oliver Powell of Counsel. The mother of X is R (hereafter ‘the mother’). She is represented at this hearing by Ms Elisabeth Wickham of counsel. X’s father is V (hereafter ‘the father’). He is represented by Mr Steven Hayden of counsel. These proceedings are brought by Luton Borough Council, represented by Ms Ann Courtney of counsel.
2. This matter has been listed before me in circumstances where on 5 March 2024 HHJ Gargan was deeply concerned about the actions of the local authority in this case following the granting of an interim care order on 31 January 2024, on which date HHJ Gargan approved a care plan providing for the removal of X from her parents’ care and her placement in foster care in the circumstances set out below.

BACKGROUND AND EVIDENCE

3. On the 5 December 2023, Luton Borough Council received a referral detailing that X had alleged that she had been sexually abused. X had alleged to police that her brother-in-law had sexually abused her by touching her over her clothes. She stated that “this is what happens” in the family home. X also said that she had been sexually assaulted by her paternal grandfather in the family home and that the last incident was about a month ago. X said that she was worried about her family being made aware of her allegations and feared negative consequences. Due to worries about her self-harming and having suicidal thoughts, X was taken to hospital. X remained in hospital between 4 December 2023 and 8 December 2023.
4. X’s brother-in-law and paternal grandfather were arrested and bailed with restrictions to have no contact with X and no unsupervised contact with anyone under the age of 18. Following the initial allegations, X further alleged that, historically, she had been raped by her brother in the family home but that his assaults had now stopped. The police then arrested her brother and imposed the same bail conditions as imposed on X’s brother-in-law and paternal grandfather not to have contact with X or unsupervised contact with anyone under 18.
5. The court is always reticent with respect to providing a particularised account of allegations of sexual abuse in a judgment. However, it is important to detail the nature and extent of the abuse that X states she suffered within the family home whilst under the care of her mother and father:
 - i) X alleged that two months after moving into the family home, X alleged that her brother-in-law attempted to rape her and that he touches her inappropriately whenever he gets the chance.
 - ii) X alleged she was sexually abused by the paternal grandfather in the family home, including incidents where he would place his hand over her mouth to stop her talking. X alleged that this had been happening weekly and since she

was nine years old. The last incident was about one month before the local authority became involved.

- iii) X alleged that her brother would frequently sexually harass her and, up to a year ago, would touch her inappropriately. X alleged that her brother had raped her fifteen times when she was between the ages of 8 and 10 years old.
6. In the foregoing context, it is further important to note that the local authority is aware that there had been prior concerns regarding the possibility of sexual abuse taking place in the family home, and of the parents being reticent regarding X's allegations.
7. A Child Protection Monitoring System record from X's school dated 11 September 2023 states that X had alleged that her brother-in-law made her feel uncomfortable in the way he was touching her. The MASH Team spoke to X's sister, Y, about these concerns, and Y stated she had told the mother about these matters. Subsequently, X stated to her teacher at school that nothing had changed at home and that her mother was more worried about getting into trouble. X stated that her mother told her to tell the school that she was joking about the comments she made regarding her brother-in-law touching her inappropriately. X has told the social worker that her family do not speak to her very much and that they do not tell the truth.
8. On 25 September 2019, Bedfordshire Police became concerned for X's safety after receiving information from Y that Y had been sexually abused by the paternal grandfather when she was a child. Y alleged that since she could remember, up until she was 13 years old, her paternal grandfather had sexually abused her. Y stated that her paternal grandfather would touch her inappropriately, watch her shower and make her watch adult pornography when he would babysit her. Y further alleged that her paternal grandfather had made her translate messages on an inappropriate web chat, and had touched her on numerous occasions from a young age up until the age of 13. When the Children's Guardian later asked X about this allegation in the context of these proceedings, X stated that she had told her parents but they said to "leave it" because of the family's reputation.
9. In addition to alleging serial sexual abuse within the family home, X also alleged that her sister and parents physically abused her at home. X also stated her brother W had hit her in the past and described him punching her on the arm and shoving her.
10. The local authority asserts that when the social worker spoke to family members about the alleged sexual abuse that X had stated was taking place in the family home, X's sisters said that it was known within the family that paternal grandfather had sexually assaulted other children of the family and that family members had warned the parents not to take X to visit him. It is clear from the statement of the mother dated 16 February 2024 that the mother does not accept this:

"I do not accept that it is thought within the family that the paternal grandfather has sexually abused children. I do not know where this has come from. I can only think that maybe it is about what Y said about him in the past. She was roughly around X's age at the time. There was an occasion when Y told us that he was not a good person. This is all that she said despite us repeatedly pushing her to tell us why. It was a long time ago

now and there has not been anything else said by her or any other children or family members about the paternal grandfather.”

11. The social worker’s statement relates that on 15 December 2023, X’s sisters stated that X should be placed in foster care as they did not think that the mother and father would be able to keep X safe.
12. Following the allegations made by X, the parents were not willing for X’s brother to leave the family home in light of his needs. The parents chose to prioritise the care of the brother and agreed to X residing with a friend of the family for a short time. In her statement, the social worker stated that the mother and the father appeared far more worried and shocked at the possibility of X’s brother not returning home than the allegations that X had made of sexual abuse. The parents contend that their prioritisation of X’s brother’s care reflects their concern about his particular vulnerabilities and not a minimising of X’s allegations.
13. In the foregoing circumstances, on 18 December 2023 X was accommodated pursuant to s.20 of the Children Act 1989 and placed in local authority foster care. On 9 January 2024, X was reported as missing from her placement. At 10.45pm on that date, X arrived at the family home. Thereafter she was conveyed to hospital and had a consultation with CAMHS due to further concerns regarding self-harm and suicide.
14. On 31 January 2024, X was made subject to an interim care order. In so far as it concerned the mother, the local authority’s interim threshold asserted, in summary, as follows:
 - i) The mother had either not recognised the signs of sexual abuse or had failed to take appropriate action to prevent the sexual abuse by three male relatives;
 - ii) X had been unable to talk to the mother about the sexual abuse as she was worried about their reaction and a negative response.
 - iii) The mother allowed contact between the paternal grandfather and X notwithstanding the warnings provided by other family members that he presented a risk of sexual abuse.
 - iv) The mother hit X.
 - v) X did not feel safe at home and could not talk to the mother for a fear of a negative reaction.
 - vi) The mother stated that X suffers from mental health issues which require to be taken into account when considering her allegations of sexual abuse.
 - vii) The mother had failed to ensure X attended school on a regular basis, X’s attendance level being 77%.
15. In her statement in support of an interim care order based on an interim care plan of the removal of X from her parents’ care, the social worker stated as follows with respect to the family’s view of X and her allegations:

“X’s parents and sister Z have stated that X suffers from mental health issues, and have often given this response when asking whether they believe the disclosures that X has made. X has also stated that she has not disclosed the sexual abuse she has suffered to her family, as she is worried about how they will react and fears a negative response from them. It appears X is viewed as a child who is rebellious, has bad behaviour and habits, and whose statements should be doubted as they believe it is likely to be as a result of her mental health needs.”

16. Within the context of the matters set out above, the social worker’s statement came to a very clear conclusion that the parents were not safe and appropriate carers for X in the interim pending assessment, and had not demonstrated the ability to keep X safe from harm:

“20. The Local Authority holds the view that [the mother] and [the father] do not have the awareness and ability to protect X from sexual abuse, and the other potential of forms of harm. It appears the family have prioritised maintaining a positive reputation in their family, and wider community, by avoiding the "shame" they fear will come with disclosing sexual abuse within the family. It appears that parents and family members have placed their reputation and cultural family dynamics over children's safety, and this has enabled sexual abuse to happen in the family over many years. This attitude and perspective from X’s parents seems to have influenced X’s siblings too, as Y stated that she is embarrassed and feels bad that she did not speak out about the sexual abuse from paternal grandfather sooner, and felt that the implication of shame on the family over the subject stopped her from doing so.

21. Furthermore, X’s parents and sister Z, have stated that X suffers from mental health issues, and have often given this as a context when I have asked whether they believe the disclosures that X has made. It appears X is viewed by her parents and sister Z, as a child who is rebellious, has bad behaviour and habits, and whose statements should be doubted as they believe it is likely as a result of her mental health needs. Y has also suggested that X’s disclosure of being raped by [her brother] is doubtful, as she stated to me, “I know my brother and he would never do something like that”.

22. Parents and Z have communicated this position despite recognising that mental health issues feature in the family and paternal relatives. The family are aware of sexual abuse allegations against paternal grandfather, and have not considered the connection this may have with those who are suffering with poor mental health in the family.”

17. The statement of the social worker further states that the mother and father continued to state that X’s poor mental health should not be ignored when considering the allegations she has made. In addition, the social worker was concerned by weight placed by the father on the fact that the brother-in-law had sworn an oath on the Quran denying the sexual abuse of X:

“It is very worrying that [the father] considered [the brother-in-law]’s oath on the Quran to be an important factor in determining his innocence. It is completely possible, and would argue that it is the case, that [the father] and potentially other family members would be satisfied if a perpetrator of sexual abuse made an oath on the Quran, and this would leave X to be viewed as being dishonest, not believable and confused over her statements.”

18. The application for an interim care order was supported by the Children’s Guardian in a report dated 31 January 2024. In the process of compiling the report, the Children’s Guardian spoke to the mother and the father on 22 January 2024. With respect to the father, the Children’s Guardian noted in her report as follows with respect to the his views on the allegations:

“[9] I asked [the father] about the allegations made against his son-in-law, to which he replied that his son in law “touched the Quran and said he looks at her as a sister he just goes to work and sits down, and we are always with X.” I asked if he thinks X is lying, he explained that his son in-law touched the “Quran, she (X) has anxieties and depression, I have paranoia and depression. She is lying.” I then pointed out that her older daughter Y had in the past made allegations against his father, he says that X was “influenced as Y and X are close.”

[10] I was curious as to why X made allegations against their son, he states “he is innocent, and I have known him since birth”. I asked why he thinks X had made allegations against him, as Y hasn’t made allegations against him? Father didn’t say anything initially and then said that X suffers from mental health and anxiety by way of explanation. When asked whether he wants X to return home, he confirmed “no you can take better care where she is she needs help and still see her twice a week. [Her brother] knows it’s not true, so if she comes back then it will be ok, but she needs help so don’t send her home now.”

19. With respect to the views of the mother concerning X’s allegations of sexual abuse, the Children’s Guardian recorded as follows in her report:

“[11] I then addressed some of the concerns with the mother, who was very keen to explain how everyone on her husband’s side of the family suffer with anxieties and depression. Adding “it is in my husband’s family problem, husband’s sisters also have anxieties, husband initially when he became ill, he tried to commit suicide by strangling himself. Like X is doing like running away from school, husband did the same. Look at X’s mental health and give her help. The paternal aunt also made allegations too and was admitted into mental health hospital. Like X. Look at my daughter’s mental health, paternal family history and why she is making these allegations. X needs to stay where she is and receive treatment and then be returned into my care.”

[12] I wanted to understand from the mother how she can believe her son in law over her own daughter. She stated “he recites Naaths (Islamic poetry in praise of the Prophet Muhammed PBUH), and he is not like that, and I treat

him like my son. My daughter and son in law moved to another town in December 2023. If X stayed with us, she would make more allegations against more people, look she has made allegations against her own brother. When X calls, I tell her to stay where she is and get help first.” I pointed out that one who recite Naaths are not free from sin or innocent and it does not mean a person cannot do wrong. I also pointed out that in Islam swearing by the holy book is firstly forbidden, and secondly it does not mean one cannot lie, as in my view, one only swears by the holy book when under pressure to cover the truth. Neither parent was able to offer me a reasonable explanation when challenged, save for they believe their daughter’s mental health has led her to make such allegations.”

20. The Children’s Guardian recorded in her report that the IRO was also of the view that, at the Child Protection Case Conference on 21 December 2023, the mother did not show any insight or acknowledge anything, asserting that it was X’s mental health that had led to the allegations. At the end of her report, the Children’s Guardian concluded as follows with respect to the family’s ability to protect X in the interim:

“I support the need for X to remain in care, as it appears that none of the adults in her family can protect her at this time. It remains to be assessed as to whether her sisters may be in a position to care for her longer term, but I note that at least in the case of Y, she appears to have known about some of the risks but has not previously sought to make any referrals or to step in to safeguard her sister.”

21. In the foregoing circumstances, at the time the court granted the local authority’s application for an interim care order on 31 January 2024 the interim care plan provided as follows:

- i) X would be placed in foster care under the auspices of an interim care order in order that X’s basic needs can be met in a stable, safe and appropriate environment.
- ii) Assessment would be undertaken of those family members who seek to care for X to establish if it is safe and appropriate for X to return under their care in the future.

22. Following the granting of the interim care order on 31 January 2024, X was placed in foster care. The parents were directed to file and serve statements. Those statements reflect a number of the concerns identified by the social worker and the Children’s Guardian which led them to recommend an interim care plan of removal from the parents’ care in circumstances where they assessed the mother and the father as being unable to protect X.

23. In his statement dated 14 February 2024, the father states in relation to the allegations made against the brother-in-law that, “I believe X is suffering from severe mental health difficulties which may have led to her believing these incidents occurred.” It is plain from the statement that the father continued to see this as a potential explanation for each of the allegations made by X, the father stating that “I also have concerns about X’s mental health and cite this as a potential reason for her many allegations against her family members.” The mother’s statement dated 16 February 2024

likewise expresses concern regarding X's motivation for making allegations of sexual abuse against family members and likewise seeks to link X's allegations with her mental health, albeit the mother is somewhat more open to the possibility that the allegations are true:

“[4] X is a vulnerable young person who I agree needs therapeutic care now. Regardless of whether X's allegations are true or not, she is our child who I know has serious mental health difficulties. She needs help. I have known about her mental health difficulties for most of her life the way she has presented but also because of her paternal family history and particularly [the father]'s mental health.”

And:

“[8] I will support the investigations into X's allegations through the police and professionals. They are very serious, and we need to know the truth. Despite my concerns about X's mental health, I believe these allegations should be taken seriously and investigated properly. I know I need to keep an open mind and it is only right that this is properly assessed.”

And:

“[46] I am worried about the suggestion in the papers about us not believing X. This is not true, and it is unfair to assume that I do not believe these very serious allegations made by my own vulnerable and unwell daughter. At the same time, we have lived with X and we have experienced her difficulties first hand. We know how troubled and difficult she is. I need to keep an open mind as to the possibility that these things have happened, but at the same time I am also worried about her reasons behind making these allegations.

[47] I note that X has since been trying to take back the allegations she has made. I believe that it is because she has experienced foster care now. She has seen that boundaries and rules also exist there. I also think that X did not appreciate how these allegations are regarded in society and due to her mental health, I am not sure that she would have understood the seriousness of them. While I cannot discount these allegations as untrue, I am aware of how bad her mental health is and its potential contribution to her making such allegations.

[48] There must be full and thorough investigations into X's allegations. I will help support the process as will my family. I cannot say whether the allegations are true or not because I have never witnessed or been aware of them happening. However, I can express my view on them when considering the context of our lived experience with X, her presentation, and her significant underlying mental health difficulties. I want the police and professionals to do their job to find out the truth but her mental health as a contributing factor must be considered at the same time.”

24. In his statement dated 14 February 2024, the father also continued to place reliance on oaths taken on the Quran, stating that “It should be noted that making such an oath is

considered an action of last resort in Islam and is not done lightly. The oath is a very serious action to take as a Muslim and therefore I do believe [the brother-in-law] is being honest.” The mother likewise places weight on the fact that the brother-in-law swore an oath on the Quran denying that he had touched X inappropriately:

“It is true that [the brother-in-law] made an oath on a book which contains certain chapters of the Quran. The oath was that he has not touched X inappropriately. This is a serious action to take in our religion and one that is not done lightly at all. I know that this does not necessarily mean that [the brother-in-law] has not done anything but I know that he takes his religion seriously. I would like to think that he is being truthful given the action he made. He is also married to X’s sister. Regardless of all of this, I am still alive to the possibility that X’s allegations could be true and I keep an open mind.”

25. X did not settle in foster care. She exhibited difficulty in adhering to boundaries and failed to attend school. She also made unsubstantiated allegations that the foster carer had taken some of her belongings and that a police officer had acted inappropriately by giving her a gift, although she later alleged this had been a health worker. X’s placement with her foster carer broke down on 12 February 2024. The local authority was not able to source an alternative foster placement. In the circumstances, the local authority decided to place X in a Travel Lodge, cared for by one of her sisters. On 26 February 2024, X’s placement with her sister at the Travel Lodge came to an end in circumstances where her sister’s work commitments precluded her from carrying on with that arrangement. The sister informed the Guardian she was unable to care for X and left the hotel placement.
26. In the sister’s place, the local authority determined that the mother should care for X at the Travel Lodge from 26 February 2024. This decision was taken without any consultation with the Children’s Guardian and, it would appear, without notice to the IRO. During a conversation with the Children’s Guardian on 4 March 2024, the Team Manager belatedly informed the Children’s Guardian that X was in the care of her mother and that the local authority had secured an Airbnb for X and her mother to move into. No record of placement approval pursuant to r.17 of the Care Planning, Placement and Case Review (England) Regulations 2010, revised interim care plan, safety plan / contract of expectations or confirmation of Service Director approval was made available on that date. I pause to note in this context that the clear conclusion of the social work statement in support of the interim care order and an interim care plan of removal had been:

“Parents and any family member who wish to care for X would have to demonstrate that they have gained the insight, awareness and motivation to ensure X is protected from harm, with a focus on protection from sexual abuse.”

27. The matter came back before HHJ Gargan on 5 March 2024, at which hearing the court was apprised of the developments set out in the foregoing paragraph. HHJ Gargan was, entirely understandably, deeply concerned with respect to these developments. HHJ Gargan’s order of 5 March 2024 directed, *inter alia*, a statement confirming the decision making process which led to X being cared for by her mother in an Airbnb, together confirmation that this placement has been signed off by the

appropriate Service Director. The order of 5 March 2024 contained the following recital:

“AND UPON the Court expressing its significant concern as to the current accommodation and care provision for X as not being suitable and being an unregulated placement in light of the mother’s accepted position in respect of threshold amounting to a wholesale failure to protect, the risk to X and urging the Local Authority to resolve this issue as a matter of urgency. In the interim the Local Authority is requested to (i) provide 24-7 family support workers and (ii) make enquiries of all extended family members known /made known to them who could step in on a short term basis to care for X in the Air BnB accommodation provided.”

28. Ahead of this hearing, no record of placement approval pursuant to r.17 of the Care Planning, Placement and Case Review (England) Regulations 2010, revised interim care plan, safety plan / contract of expectations or confirmation of Service Director approval was provided to the court that might have assisted to explain the local authority’s decision to place X in the care of mother in an Airbnb notwithstanding the matters set out above. The statement of the social worker for this hearing appears to conclude that (although the analysis is far from clear or robust) that the fact that X is more settled in her mother’s care than in foster care is sufficient reason to endorse the mother caring for X, notwithstanding the extensive concerns set out in the social worker’s previous statements regarding the mother’s capacity to protect X from sexual abuse. Within this context, and despite the request set out in the recital of the order of HHJ Gargan dated 5 March 2024, the social worker’s statement related that the local authority was satisfied that 24/7 support from a family support worker was not merited.
29. In the absence of any clear explanation of the local authority’s rationale for placing X in the care of her mother notwithstanding the circumstances set out above, at the outset of the hearing I directed the attendance of the Head of Service for Family Safeguarding, and the Operations Director for Children’s Services. The Head of Service’s attendance had, in fact, been directed by the order of HHJ Gargan of 5 March 2024, but it was necessary for this court to repeat that direction in order to secure his attendance.
30. The Head of Service stated that approval for the placement of X with her mother pursuant to r.17 and Sch. 3 of the Care Planning, Placement and Case Review (England) Regulations 2010 has been given, although he was less than certain about whether any record of that decision had been created. He further stated that approval pursuant to r.17 had been given on the basis that the local authority now considered the mother as a protective factor. Again, the Head of Service was less than certain about the precise forensic foundations underpinning that conclusion, but stated that there had been a “positive risk assessment” in respect of the mother. He further relied on the fact that X had not sought to abscond whilst she had been in her mother’s care and that X had said she did not want to be away from her family. In these circumstances, the Head of Service told that court that the local authority was now “working towards the safe rehabilitation of X to the care of her family.” Questioned about the evidence of the social worker that the mother was not capable of protecting X, that no assessment of the parents had yet been undertaken, that the court was being invited to make serious findings of sexual abuse and failure to protect, that the court

had granted an interim care order an approved a care plan of removal and that there was an ongoing police investigation from which no disclosure had been provided, the Head of Service repeatedly fell back on the bald assertion that “risk assessment is a dynamic process”.

31. Whilst I acknowledge that the Operations Director was not expecting to give evidence at the hearing, and had not provided a statement, the Operations Director’s evidence was likewise somewhat difficult to follow with respect both to the decision to allow the mother to care for X in an Airbnb and with respect to the mother’s ability to protect X.
32. With respect to the decision that the mother should care for X in an Airbnb, the Operations Director suggested during the course of her evidence that the interim care plan had now formally changed, the local authority having taken a reasoned decision that the mother would now care for X in the interim. The Operations Director’s further stated that a revised interim care plan was now in the process of being completed. However, the Position Statement of the local authority for the hearing on 5 March 2024 was clear that the local authority’s position, as approved by the Head of Service, was that X would be cared for in an Airbnb whilst the Local Authority continued its search for a foster placement for her. At the outset of this hearing, counsel for the local authority did not suggest that position had changed and nor had the other parties been put on notice of any change of position. In these circumstances, and at the conclusion of the Operations Director’s evidence, I invited counsel for the local authority to take instructions from the social worker regarding the interim care plan. The social worker instructed counsel that she had not been made aware of any change to the interim care plan and had not been instructed to draft a revised interim care plan. As I have noted, ahead of this hearing the local authority had not provided any amended care plan, any revised risk assessment, any safety agreement, any visiting matrix or any confirmation that the relevant regulations had been complied with. The Children’s Guardian had not been consulted about a change of interim care plan.
33. With respect to the mother’s ability to protect X in light of the matters set out above, the Operations Director also sought to rely on what she contended was a robust risk assessment that preceded the decision to place X in her mother’s care. Beyond that however, the Operations Director repeatedly descended into vague generalities regarding, by way of example, families “going on a journey in respect of disclosures” (the Operations Director appeared to be unaware of the long standing convention regarding the proper description of allegations of sexual abuse prior to any conviction or findings of fact dating back to the Cleveland Report). The Operations Director was not able to articulate beyond such vague assertions what specific forensic factors had caused the local authority now to conclude that the mother was capable now of protecting X against the risk of sexual abuse, save to repeat that X’s behaviour had improved since being in the care of her mother. The Operations Director was prepared to provide her definitive conclusions regarding the mother’s ability to protect notwithstanding that she had not had sight of the statement of the mother dated 16 February 2024, in which the mother repeatedly references her view that the allegations made by X must be viewed through the prism of X’s mental health.
34. As can be seen, both the Head of Service and the Operations Director relied on what they considered to be a robust risk assessment as supporting the placement of X in the

care of her mother. The court has now had sight of that risk assessment, dated 26 February 2024. It cannot be described as robust.

35. The purported risk assessment deals only in the most cursory manner with the allegations of sexual abuse, with a brief summary of the allegations that misses out any account of X's recent allegations against the paternal grandfather. In particular, the superficial and incomplete narrative account set out in the purported risk assessment does not deal with the precise nature and extent of the allegations made by X and makes no reference to the views expressed by the mother concerning the source and credibility of those allegations. The narrative makes no reference at all to the fact that on 31 January 2024 the court was satisfied, pursuant to s.38(2) of the Children Act 1989, that there were reasonable grounds for believing that X had suffered significant harm, that the allocated social worker and the Children's Guardian were each of the view that the parents were not able to protect X from a risk of sexual abuse, that in those circumstances the local authority had sought the removal of X from the care of her parents or that there was an ongoing police investigation following the arrest of the X's brother, brother-in-law and paternal grandfather. Both parents informed the social worker that they have longstanding mental health issues, the mother suffering from chronic depression and anxiety and the father having severe anxiety, panic attacks, hallucinations and paranoia. These are not dealt with. The hurried and inadequate narrative is followed by a series of tick boxes that have themselves been inaccurately completed. Finally, the purported risk assessment that the Head of Service and the Operations Director advanced as the forensic foundation of their conclusion that the mother is now able to protect X from the risk of sexual abuse in the interim contains no analysis whatsoever of the nature and degree of the risk of sexual harm to X or of the extent of the mother's ability to protect from risk of sexual harm in light of the evidence available. The risk assessment does not deal at all with X's allegations of physical abuse against her family members, including the mother. In the foregoing context, the conclusion of the risk assessment is limited to the following, grammatically incorrect, observation:

“Although mother is able to care for X and meet her needs, and is able to keep her safe. The likelihood of X running away, not listening or following instruction, or making other allegations against her mother may be high if X does not get her own way.”

36. During her oral evidence, the Operations Director did not seem unduly troubled by the obvious and concerning omissions from the purported risk assessment, stating simply that the risk assessment could have been “better evidenced”. The Operations Director continued to assert that the risk assessment provided a proper basis for the conclusion that the mother is now able to protect X from sexual harm.
37. Finally by way of background, the police have indicated an intention to ABE interview X, but this has not occurred yet. The local authority did not appear to have considered the question of whether the arrangements for the mother to care for X impacted on the ongoing police investigation in light of the statements previously made by X. In this context, I note that when the Children's Guardian last spoke to X, X stated that she is no longer sure whether she was sexually abused by her brother.

THE LAW

38. Section 38 of the Children Act 1989 provides as follows with respect to interim care orders:

“38 Interim orders.

(1) Where—

(a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or

(b) the court gives a direction under section 37(1), the court may make an interim care order or an interim supervision order with respect to the child concerned.

(2) A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2).

(3) Where, in any proceedings on an application for a care order or supervision order, a court makes a child arrangements order with respect to the living arrangements of the child concerned, it shall also make an interim supervision order with respect to him unless satisfied that his welfare will be satisfactorily safeguarded without an interim order being made.

(3A) For the purposes of subsection (3), a child arrangements order is one made with respect to the living arrangements of the child concerned if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following—

(a) with whom the child is to live, and

(b) when the child is to live with any person.

(4) An interim order made under or by virtue of this section shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on whichever of the following events first occurs—

.../

(c) in a case which falls within subsection (1)(a), the disposal of the application;

(d) in a case which falls within subsection (1)(b), the disposal of an application for a care order or supervision order made by the authority with respect to the child;

(da) in a case which falls within subsection (1)(b) and in which—

- (i) no direction has been given under section 37(4), and
 - (ii) no application for a care order or supervision order has been made with respect to the child, the expiry of the period of eight weeks beginning with the date on which the order is made;
- (e) in a case which falls within subsection (1)(b) and in which—
- (i) the court has given a direction under section 37(4), but
 - (ii) no application for a care order or supervision order has been made with respect to the child, the expiry of the period fixed by that direction.
- (5) .../
- (6) Where the court makes an interim care order, or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.
- (7) A direction under subsection (6) may be to the effect that there is to be —
- (a) no such examination or assessment; or
 - (b) no such examination or assessment unless the court directs otherwise.
- (7A) A direction under subsection (6) to the effect that there is to be a medical or psychiatric examination or other assessment of the child may be given only if the court is of the opinion that the examination or other assessment is necessary to assist the court to resolve the proceedings justly.
- (7B) When deciding whether to give a direction under subsection (6) to that effect the court is to have regard in particular to—
- (a) any impact which any examination or other assessment would be likely to have on the welfare of the child, and any other impact which giving the direction would be likely to have on the welfare of the child,
 - (b) the issues with which the examination or other assessment would assist the court,
 - (c) the questions which the examination or other assessment would enable the court to answer,
 - (d) the evidence otherwise available,
 - (e) the impact which the direction would be likely to have on the timetable, duration and conduct of the proceedings,
 - (f) the cost of the examination or other assessment, and

(g) any matters prescribed by Family Procedure Rules.]

(8) A direction under subsection (6) may be—

(a) given when the interim order is made or at any time while it is in force; and

(b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.

(9) Paragraphs 4 and 5 of Schedule 3 shall not apply in relation to an interim supervision order.

(10) Where a court makes an order under or by virtue of this section it shall, in determining the period for which the order is to be in force, consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue his case against the order in full.”

39. Regulation 17 of the Care Planning, Placement and Case Review (England) Regulations 2010 provides as follows:

“Assessment of P's suitability to care for a child

17. Before deciding to place C with P, the responsible authority must—

(a) assess the suitability of P to care for C, including the suitability of—

(i) the proposed accommodation, and

(ii) all other persons aged 18 and over who are members of the household in which it is proposed that C will live,

(b) take into account all the matters set out in Schedule 3 in making their assessment,

(c) consider whether, in all the circumstances and taking into account the services to be provided by the responsible authority, the placement will safeguard and promote C's welfare and meet C's needs set out in the care plan, and

(d) review C's case in accordance with Part 6.”

40. Schedule 3 of the Care Planning, Placement and Case Review (England) Regulations 2010, as referred to in r.17, provides as follows with respect to the matters to be taken into account:

“SCHEDULE 3

Matters to be taken into account when assessing the suitability of P to care for C

1. In respect of P—
 - (a) P's capacity to care for children and in particular in relation to C to—
 - (i) provide for C's physical needs and appropriate medical and dental care,
 - (ii) protect C adequately from harm or danger, including from any person who presents a risk of harm to C,
 - (iii) ensure that the home environment is safe for C,
 - (iv) ensure that C's emotional needs are met and C is provided with a positive sense of self, including any particular needs arising from C's religious persuasion, racial origin and cultural and linguistic background, and any disability C may have,
 - (v) promote C's learning and intellectual development through encouragement, cognitive stimulation and the promotion of educational success and social opportunities,
 - (vi) enable C to regulate C's emotions and behaviour, including by modelling appropriate behaviour and interactions with others, and
 - (vii) provide a stable family environment to enable C to develop and maintain secure attachments to P and other persons who provide care for C,
 - (b) P's state of health including P's physical, emotional and mental health and medical history including any current or past issues of domestic violence, substance misuse or mental health problems,
 - (c) P's family relationships and the composition of P's household, including particulars of—
 - (i) the identity of all other members of the household, including their age and the nature of their relationship with P and with each other, including any sexual relationship,
 - (ii) any relationship with any person who is a parent of C,
 - (iii) other adults not being members of the household who are likely to have regular contact with C, and
 - (iv) any current or previous domestic violence between members of the household, including P,
 - (d) P's family history, including—
 - (i) particulars of P's childhood and upbringing including the strengths and difficulties of P's parents or other persons who cared for P,

(ii) P's relationships with P's parents and siblings, and their relationships with each other,

(iii) P's educational achievement and any specific learning difficulty or disability,

(iv) a chronology of significant life events, and

(v) particulars of other relatives and their relationships with C and P,

(e) particulars of any criminal offences of which P has been convicted or in respect of which P has been cautioned,

(f) P's past and present employment and other sources of income, and

(g) the nature of the neighbourhood in which P's home is situated and resources available in the community to support C and P.

2. In respect of members of P's household aged 18 and over, so far as is practicable, all the particulars specified in paragraph 1 except subparagraphs (d), (f) and (g).”

41. With respect to the court's power to intercede with respect to an interim care plan following the granting of an interim care order, in *Re T* [2018] 4 WLR 121 at [42] and [43] Peter Jackson LJ, having considered *Re W (A Child)(Care Proceedings: Court's Function)* and *Re CH (Care or Interim Care Order)* [1998] 1 FLR 402, held as follows:

“[42] Although they touch upon the same subject, the decision of the Court of Appeal in *Re CH* (above) does not appear to have been cited in *Re W* . For my part, I would view the two decisions as seeking to make essentially the same point, though the tone in *Re W* is markedly more imperative. I particularly refer to the observations that it is not open to a local authority within proceedings to decline to accept the court's evaluation of risk [81] and that a local authority cannot refuse to provide lawful and reasonable services that would be necessary to support the court's decision [83]. I would agree with these propositions to the extent that the court's assessment of risk is sovereign within proceedings and that a local authority cannot refuse to provide a service if by doing so it would unlawfully breach the rights of the family concerned or if its decision-making process is unlawful on public law grounds. However, the family court cannot dictate to the local authority what its care plan is to be, any more than it can dictate to any other party what their case should be. What the court can, however, expect from a local authority is a high level of respect for its assessments of risk and welfare, leading in almost every case to those assessments being put into effect. For, as has been said before, any local authority that refused to act upon the court's assessments would face an obvious risk of its underlying decisions being declared to be unlawful through judicial review. That must particularly be so where decisions fail to take account of the court's assessments. Or where, as in this case, there is an impasse, there may have to be an appeal. But in the end, experience shows that the process

of mutual respect spoken of by Thorpe LJ will almost inevitably lead to an acceptable outcome.

[43] It is clear from these decisions that the court has both a power and a duty to assert its view of risk and welfare by whatever is the most effective means. I cannot agree with the submission made on the behalf of the guardian – "some judges might have pursued the matter further with the agency decision maker, but this judge cannot be said to have been wrong not to do so." As Lord Justice McFarlane remarked during argument, that amounts to a lottery, depending upon the inclinations of one judge as against another. The obligation upon the court is not merely to make its assessment, but to see it through. That is a matter of principle, and not one of individual judicial inclination."

DISCUSSION

42. Where a local authority seeks to implement a care plan that runs contrary to the court's assessment of risk and welfare in proceedings, and thereafter refuses to change that care plan notwithstanding concerns expressed by the court, the court is placed in a difficult position in circumstances where the family court cannot dictate to the local authority what its care plan is to be. However, as set out in *Re T*, the court has both a power and a duty to assert its concluded view of risk and welfare by whatever is the most effective means.
43. On the basis of the evidence before the court, I am satisfied that the current arrangements being pursued by the local authority are wholly inconsistent with the court's assessment of risk in these proceedings, and inconsistent with the court's assessment of X's welfare in these proceedings, and which led to the making of an interim care order on a care plan of removal as recently as 31 January 2024. I am further satisfied that the local authority must in this case now accord a high level of respect for the court's assessments of risk and welfare, which should now lead in this case to those assessments being put into effect. My reasons for so deciding are as follows.
44. On 31 January 2024, and on the application of the local authority, the court reached a clear conclusion in these proceedings with respect to the risk of harm and with respect to the best interests of X consequent upon that assessment of risk. In this case, the court decided that there are reasonable grounds for believing that the circumstances with respect to X are as set out in s. 31(2) of the Children Act 1989. Where the court determines it is satisfied pursuant to s.38(2) of the 1989 Act that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2), that conclusion does not constitute a finding of fact (see *Re G (Children: Fair Hearing)* [2019] EWCA Civ 126). However, it does mean that the court is satisfied on the evidence that there are reasonable grounds for believing that X has suffered or is at risk of suffering significant sexual and physical harm and that harm or likelihood of harm is attributable to the care given to her or likely to be given to her by her mother and father.

45. Further, in this case the welfare assessment of the court on 31 January 2024 in the context of that assessment of risk (and at the urging of the local authority) was that it was in X's best interests to be removed from the care of her mother and father having regard to the matters set out in s.1(3) of the Children Act 1989, which factors include any harm that X has suffered and how capable are her parents of meeting her needs. The court's welfare assessment was based on the clear evidence that the local authority placed before the court indicating that the mother was not capable of protecting X from a risk of physical and sexual abuse. Within that context, the court approved an interim care plan removing X from the care of her parents on the basis that the local authority would implement that interim care plan.
46. In this context, and as set out above, the Court of Appeal has emphasised what Peter Jackson LJ referred to in *Re T* at [41] as the primacy of the court's risk and welfare evaluation, noting the observation of Sir James Munby P in *Re W (A Child)(Care Proceedings: Court's Function)* [2013] EWCA Civ 1227 at [80] that it is simply not open to a local authority within proceedings to decline to accept the court's evaluation of risk, no matter how much it may disagree with the same. Peter Jackson LJ confirmed in *Re T* that the same principle applies with respect to the court's assessment of welfare.
47. In this case, having heard evidence from the Head of Service and the Operations Director, I am satisfied that in making a decision, prior to the determination of the allegations made by X (whether by a finding of fact hearing or criminal proceedings) and prior to having undertaken any social work assessment of the parents, to place X in care of her mother the local authority has simply disregarded the court's assessments of risk and welfare in these proceedings. The evidence of the Head of Service and the Operations Director simply ignored these matters notwithstanding that the local authority itself instigated these proceedings, led evidence in the proceedings which indicated that the mother was not able to protect X from the risk of physical and sexual abuse and requested that the court approve an interim care plan of removal.
48. The court must, of course, not be inflexible in its approach. If there is information that merits the court revisiting its initial assessment of risk or its welfare assessment then, upon a party bringing the proceedings back before the court, the court can consider again the interim decisions it has reached based on that new information. However, in addition to the local authority have proceeded in this case without reference to the court or its risk and welfare assessments, the purported evidence relied on by the local authority comes nowhere close to justifying the revisiting of those assessments.
49. The purported risk assessment of 26 February 2024 relied on by the Head of Service and the Operations Director to demonstrate that the mother is, contrary to the clear evidence and assessment of the social worker, now able to protect X from the risk of sexual abuse is wholly deficient. As I have noted, the document deals only in the most cursory manner with the allegations of sexual abuse, the superficial and incomplete narrative account failing to deal with the precise nature and extent of the allegations made. As already noted, the purported risk assessment contains no mention of the court's decision that there were reasonable grounds for believing that X had suffered significant harm on the basis, *inter alia*, that the parents were not able to protect X from a risk of sexual abuse or the ongoing police investigation. There is no analysis whatsoever of the nature and degree of the risk of sexual harm to X or the

extent of the mother's ability to protect from risk of sexual harm in light of the evidence available. The document does not deal at all with X's allegations of physical abuse against her family members, including the mother. Most fundamentally, in circumstances where the Head of Service and the Operations Director contend the document evidences change on the part of the mother to the extent that she is now able to protect X, there is no reference to the views expressed by the mother central to any assessment of her capacity to protect. Within that context, and in particular, there is no record of the mother acknowledging the concerns regarding sexual and physical abuse arising from X's allegations, of accepting responsibility for what X alleged she experienced in the family home, of understanding the impact on X, of a recognition of the need to change or of a commitment to change.

50. In these circumstances, what is a manifestly inadequate and flawed document cannot possibly be said to support the decision making of the Head of Service and the Operations Director or the revisiting by the court of its risk and welfare assessments. Robust risk assessment in the context of alleged sexual abuse is not derived from vague assertions about families "going on a journey with respect to disclosures of sexual abuse". It is derived from the careful, detailed, evidence based social work practice that is articulated in, and has been repeatedly emphasised since, the Cleveland Report and which I summarised in *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27 at [599]. The purported risk assessment relied on by the Head of Service and the Operations Director in this case fails to measure up in every respect to that long-established guidance.
51. The decision of the Head of Service and the Operations Director to place X in the care of her mother in an Airbnb, also has no forensic foundation in any other evidence. Before deciding to place X in the care of her mother in an Airbnb, r.17 of the Regulation 17 of the Care Planning, Placement and Case Review (England) Regulations 2010 required the local authority to assess the suitability of mother to care for X, including the suitability of the proposed Airbnb accommodation, taking into account the matters set out in Schedule 3 of the Regulations. The matters defined in Schedule 3 include the mother's ability to protect X adequately from harm or danger, including from any person who presents a risk of harm to X, and to ensure that the home environment is safe for X. Whilst the Head of Service asserted that approval for the placement of X with her mother pursuant to r.17 of the Care Planning, Placement and Case Review (England) Regulations 2010 had been given, neither the Head of Service and the Operations Director were able to provide the court with any documentary evidence of this decision having been considered, taken and recorded.
52. Regulation 17(c) of the of the Care Planning, Placement and Case Review (England) Regulations 2010 further required the local authority to determine whether, in all the circumstances and taking into account the services to be provided by the local authority, the placement would safeguard and promote X's welfare and meet X's needs set out in the care plan. However, once again, neither the Head of Service nor the Operation Director was able to provide the court with an amended interim care plan with respect to X. Indeed, the care plan for X appeared to evolve during the course of the evidence, and in particular the evidence of the Operations Director. As I have noted, as at 5 March 2024 the local authority's position was that it would continue its

search for a foster placement for X. At the outset of this hearing, counsel for the local authority did not suggest that position had changed and nor had the other parties been put on notice of any change of position. The social worker appeared completely unaware that the interim care plan had changed and the fact that, on the Operations Director's evidence, she should have been drafting a new care plan. Whilst the Operations Director stated during her evidence that the interim care plan had changed from foster care to placement with the mother as the result of a considered discussion and between her and the Head of Service, I regret that I was left with the distinct impression that the Operations Director had revised the interim care plan during the course of her evidence in order to give the appearance of rationality to a decision making process that had in fact driven by a shortage of resources.

53. Within the foregoing context, it appeared that the sole argument advanced by the Head of Service and the Operations Director to support their assertion that the mother was now able to protect X from the risk of sexual and physical abuse centred on the improvement in X's behaviour, and thus to depart from the risk and welfare assessments of the court, was that X's behaviour had improved in the care of her mother. In this respect, the Head of Service and the Operations Director each argued that this improvement in behaviour was evidence of the mother's capacity to protect X from sexual and physical abuse to a greater degree than was the case when the local authority sought the removal of X from her mother's care. There are obvious difficulties with that contention.
54. There is no robust assessment demonstrating that the genesis of X's improved behaviour *is* the result of any improved capacity on the part of the mother to protect her from sexual and physical harm as opposed to, for example, the fact that X is simply happier in the care of her mother than in foster care. In this context, time and again the Head of Service and the Operations Director mistakenly conflated improvements in X's behaviour, which have not yet been the subject of formal assessment and may derive from any number of factors, with a reduction in the risk of harm arising from the allegations made by X that, whilst in the care of the mother and the father, she was subjected to sexual abuse by three relatives over the course of at least five years, including repeated rapes. In the circumstances, I am satisfied that the noted change in X's behaviour over a short period of time is not a sufficient foundation to depart from the risk and welfare assessments of the court.

CONCLUSION

55. Alleged sexual abuse is a complex and grave safeguarding issue that demands a careful and precise forensic approach to evidence based risk assessment. The casual and cavalier approach adopted by the local authority to risk assessment and decision making for X in this case is the antithesis of the correct approach and one which manifestly fails to safeguard X. On 31 January 2024, this court assessed X to be at risk of sexual and physical abuse and assessed the mother and the father as being unable to protect X from that risk. In that context, the court further assessed X's welfare as requiring the removal from her parents' care. The local authority has to date placed nothing before the court that justifies those conclusions being revisited.
56. In the foregoing circumstances, it is the expectation of this court that the local authority will accord the highest respect to the risk assessment and welfare assessment of this court and will now implement the decision made by the court in these

proceedings consequent on its assessment of risk and welfare on 31 January 2024. I shall list the matter for further hearing on 14 March 2024 before Arbuthnot J for the local authority to confirm to the court that this is the course of action that it now intends to take or to seek to persuade the court on proper evidence that the court should now revisit its risk and welfare assessments. I will make further directions accordingly.